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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,123	02/10/2004	William Schmidt	ML 0196 PUS	2122
27256	7590	11/29/2005	EXAMINER	
ARTZ & ARTZ, P.C. 28333 TELEGRAPH RD. SUITE 250 SOUTHFIELD, MI 48034				AMARI, ALESSANDRO V
			ART UNIT	PAPER NUMBER
			2872	

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/708,123 Examiner Alessandro V. Amari	SCHMIDT ET AL. Art Unit 2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 November 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-10 is/are allowed.
- 6) Claim(s) 11-22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 February 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of species 1 in the reply filed on 3 November 2005 is acknowledged. The traversal is on the ground(s) that the species cited in the restriction only differ if they are an angled back mirror or a flat back mirror. This is not found persuasive because the applicant did not submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. Claim 14 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim.

The requirement is still deemed proper and is therefore made FINAL.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claim 11 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/908,038. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of 10/908,038 is broader than claim 11 of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 11-13 and 15, 17, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmidt et al et al US 4,436,372.

In regard to claim 11, Schmidt et al teaches (see Figures 3, 4) a mirror assembly comprising a base comprising a first base portion defined by a first base longitudinal line (32) and a first base periphery (40, 42), said first base portion having a first base radius of curvature as described in column 4, lines 51-57; and a second base portion defined by said first base longitudinal line and a second base periphery (36), said second base portion having a second base radius of curvature as described in column 4, lines 51-57;

and a dome lens (22) conforming to said base, said dome lens comprising a major axis tip portion of an ellipsoid as shown in Figure 4, said major axis tip portion formed by dividing said ellipsoid across a major axis as described in column 4, lines 51-59, said dome lens generating a first proportion image view (corresponding to elements 44, 48) and a second proportion image (corresponding to element 46), said first proportion image view generating smaller image proportions than said second proportion image view as described in column 6, lines 12-21, said first proportion image view positioned at an ellipsoid tip point (14, 19) as shown in Figure 3.

Regarding claim 12, Schmidt et al teaches that said ellipsoid is divided perpendicular to said major axis and then further divided parallel to said major axis to form said major axis tip portion as shown in Figure 3 and as described in column 4, lines 51-60.

Regarding claim 13, Schmidt et al teaches that said first base portion is perpendicular to said second base portion as described in column 4, lines 24-26.

Regarding claim 15, Schmidt et al teaches that said first base portion is non-planar with said second base portion as shown in Figure 3.

Regarding claim 16, Schmidt et al teaches a said ellipsoid tip point is positioned in between said first base periphery and said second base periphery as shown in Figure 3.

Regarding claim 17, Schmidt et al teaches that said ellipsoid tip point is positioned adjacent said second base periphery as shown in Figure 3. Since the

specification does not define the term "adjacent" in any terms of degree, the reference is taken to read on the claimed recitation.

Regarding claim 18, Schmidt et al teaches that said ellipsoid includes a minor axis length less than half of a major axis length as shown in Figure 3 and as described in column 4, lines 19-32.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt et al et al US 4,436,372 in view of Schmidt et al US 5,589,984.

In regard to claim 19, Schmidt et al teaches a method of improving a vehicle driver's field of view comprising a base comprising a first base portion defined by a first base longitudinal line (32) and a first base periphery (40, 42), said first base portion having a first base radius of curvature as described in column 4, lines 51-57; and a second base portion defined by said first base longitudinal line and a second base periphery (36), said second base portion having a second base radius of curvature as described in column 4, lines 51-57; and a dome lens (22) conforming to said base, said dome lens comprising a major axis tip portion of an ellipsoid as shown in Figure 4, said major axis tip portion formed by dividing said ellipsoid across a major axis as described in column 4, lines 51-59, said dome lens generating a first proportion image view

(corresponding to elements 44, 48) and a second proportion image (corresponding to element 46), said first proportion image view generating smaller image proportions than said second proportion image view as described in column 6, lines 12-21, said first proportion image view positioned at an ellipsoid tip point (14, 19) as shown in Figure 3. Regarding claim 21, Schmidt et al teaches that said first base portion is perpendicular to said second base portion as described in column 4, lines 24-26.

However, regarding claim 19, Schmidt '372 does not teach positioning said mirror assembly such that a vehicle reflection is reflected to the driver within said first proportion image view; and positioning said mirror assembly such that said second proportion image view reflects to the driver a front of-vehicle view and a side-of-vehicle view or in regard to claim 20, orientating said mirror assembly such that said second base portion is parallel with a vehicle hood plane, said ellipsoid tip point positioned adjacent said second base periphery or in regard to claim 22, orientating said mirror assembly such that said ellipsoid tip point is positioned closer to the vehicle than said first base periphery.

In regard to claim 19, Schmidt et al '984 teaches positioning said mirror assembly such that a vehicle reflection is reflected to the driver within said first proportion image view; and positioning said mirror assembly such that said second proportion image view reflects to the driver a front of-vehicle view and a side-of-vehicle view and in regard to claim 20, orientating said mirror assembly such that said second base portion is parallel with a vehicle hood plane, said ellipsoid tip point positioned adjacent said second base periphery and in regard to claim 22, orientating said mirror assembly such that said

ellipsoid tip point is positioned closer to the vehicle than said first base periphery as described in column 4, lines 9-18.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to position the mirror as taught by Schmidt et al '984 for the mirror assembly of Schmidt et al '372 in order to improve the field of view for the observer and thus improve vehicular safety.

***Allowable Subject Matter***

8. Claims 1-10 are allowed.
9. Claim 1 is allowable over the prior art for at least the reason that the prior art fails to teach or reasonably suggest, "said dome lens having a varying dome lens radius of curvature, said dome lens comprising a center surface portion having a center surface radius of curvature, said center surface radius corresponding to a position on said dome lens aligned with a first base longitudinal midpoint to said dome lens, said center surface radius perpendicular to said first base longitudinal line; and a peripheral surface portion having a peripheral surface radius of curvature, said peripheral surface radius of curvature corresponding to said first base periphery, said peripheral surface radius of curvature greater than said center surface radius of curvature" as set forth in the claimed combination. Claims 2-10 are also allowable based upon their dependence on claim 1.

The prior art of record teaches a vehicle mirror assembly comprising a base comprising a first base portion defined by a first base longitudinal line and a first base periphery, said first base portion having a first base radius of curvature; and a second

base portion defined by said first base longitudinal line and a second base periphery, said second base portion having a second base radius of curvature; and a dome lens conforming to said base. However, the prior art does not teach said dome lens having a varying dome lens radius of curvature, said dome lens comprising a center surface portion having a center surface radius of curvature, said center surface radius corresponding to a position on said dome lens aligned with a first base longitudinal midpoint to said dome lens, said center surface radius perpendicular to said first base longitudinal line; and a peripheral surface portion having a peripheral surface radius of curvature, said peripheral surface radius of curvature corresponding to said first base periphery, said peripheral surface radius of curvature greater than said center surface radius of curvature and there is no motivation or teaching to modify this difference as derived.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Englander US 6,227,674, Albers et al US 5,084,785, Schmidt et al US 4,938,578, Schmidt et al US 5,307,211 and Schmidt et al US 5,005,963 teach an

elliptical mirror assembly for improving image views.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alessandro V. Amari whose telephone number is (571) 272-2306. The examiner can normally be reached on Monday-Friday 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on (571) 272-2312. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ava(M)  
21 November 2005

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Examiner AU 2872